

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENE READER LLC)
Plaintiff,)
v.) Civil Action No. _____
AFFYMETRIX, INC.) **JURY TRIAL DEMANDED**
Defendant.)

)

COMPLAINT

For its Complaint, Plaintiff Gene Therapy LLC ("Gene Reader"), by and through the undersigned counsel, alleges as follows:

THE PARTIES

1. Gene Reader LLC is a Texas limited liability company with a place of business located at 1400 Preston Road #400, Plano, Texas 75093.
2. Defendant Affymetrix, Inc. is a Delaware corporation with, upon information and belief, a place of business located at 3420 Central Expressway, Santa Clara, California 95051.
3. Upon information and belief, Defendant has registered with the Texas Secretary of State to conduct business in Texas.

JURISDICTION AND VENUE

4. This action arises under the Patent Act, 35 U.S.C. § 1 *et seq.*
5. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§ 1331 and 1338.
6. Upon information and belief, Defendant conducts substantial business in this forum, directly or through intermediaries, including: (i) at least a portion of the infringements

alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in this district.

7. Venue is proper in this district pursuant to §§ 1391(b), (c) and 1400(b).

THE PATENTS-IN-SUIT

8. On April 8, 2003, United States Patent No. 6,545,758 (the "'758 patent"), entitled "Microarray Detector And Synthesizer," was duly and lawfully issued by the U.S. Patent and Trademark Office. A true and correct copy of the '758 patent is attached hereto as Exhibit A.

9. On May 20, 2003, United States Patent No. 6,567,163 (the "'163 patent"), entitled "Microarray Detector And Synthesizer," was duly and lawfully issued by the U.S. Patent and Trademark Office. A true and correct copy of the '163 patent is attached hereto as Exhibit B.

10. Gene Reader is the assignee and owner of the right, title and interest in and to the '758 and '163 patents, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 6,545,758

11. Gene Reader repeats and realleges the allegations of paragraphs 1 through 10 as if fully set forth herein.

12. Without license or authorization and in violation of 35 U.S.C. § 271(a), Defendant is liable for infringement of the '758 patent by making, using, importing, offering for sale, and/or selling a system and method for detecting the presence of a sample on a microarray, including, but not limited to the GeneChip HT Array Plate Scanner, covered by one or more claims of the '758 patent.

13. More specifically and upon information and belief, the GeneChip HT Array Plate Scanner includes a spatial light modulator capable of selectively optically interrogating a patterned microarray. *See* Data Sheet: GeneChip HT Array Plate Scanner (available at http://media.affymetrix.com/support/technical/datasheets/htapscanner_datasheet.pdf (last accessed Aug. 10, 2015); GeneChip HT Array Plate Scanner User's at p. 40 (available at http://media.affymetrix.com/support/downloads/manuals/ht_arrayplate_scanner_user_guide.pdf (last accessed Aug. 10, 2015). The GeneChip HT Array Plate Scanner also includes a synchronous detector capable of detecting an optical signal obtained from the patterned microarray. *See* Data Sheet: GeneChip HT Array Plate Scanner (available at http://media.affymetrix.com/support/technical/datasheets/htapscanner_datasheet.pdf (last accessed Aug. 10, 2015); GeneChip HT Array Plate Scanner User's at p. 42 (available at http://media.affymetrix.com/support/downloads/manuals/ht_arrayplate_scanner_user_guide.pdf (last accessed Aug. 10, 2015). The GeneChip HT Array Plate Scanner further includes a processor capable of performing repetitive comparative measurements of the optical signals from one or more sites on the patterned microarray. *See* Data Sheet: GeneChip HT Array Plate Scanner (available at http://media.affymetrix.com/support/technical/datasheets/htapscanner_datasheet.pdf (last accessed Aug. 10, 2015).

14. Gene Reader is entitled to recover from Defendant the damages sustained by Gene Reader as a result of Defendant's infringement of the '758 patent in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 6,567,163

15. Gene Reader repeats and realleges the allegations of paragraphs 1 through 14 as if fully set forth herein.

16. Without license or authorization and in violation of 35 U.S.C. § 271(a), Defendant is liable for infringement of the '163 patent by making, using, importing, offering for sale, and/or selling a system and method for detecting optical signals generated from a microarray, including, but not limited to the GeneChip HT Array Plate Scanner, covered by one or more claims of the '163 patent.

17. Gene Reader is entitled to recover from Defendant the damages sustained by Gene Reader as a result of Defendant's infringement of the '163 patent in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

JURY DEMAND

Gene Reader hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Gene Reader requests that this Court enter judgment against Defendants as follows:

- A. An adjudication that Defendant have infringed the '758 and '163 patents;
- B. An award of damages to be paid by Defendant adequate to compensate Gene Reader for Defendant's infringement of the '758 and '163 patents and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;

C. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Gene Reader's reasonable attorneys' fees; and

D. An award to Gene Reader of such further relief at law or in equity as the Court deems just and proper.

Dated: August 11, 2015

/s/Andrew W. Spangler

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